

SUBCHAPTER H—APPEAL PROCEEDINGS BEFORE THE COMMISSION

PART 580—RULES OF GENERAL APPLICATION IN APPEAL PROCEEDINGS BEFORE THE COMMISSION

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AUTHORITY: 25 U.S.C. 2706, 2713, 2715.

SOURCE: 77 FR 58945, Sept. 25, 2012, unless otherwise noted.

§ 580.1 What definitions apply?

The following definitions apply to this subchapter:

Day: A calendar day.

De novo review: A standard of review where the Commission reviews the matter anew, as if it had not been reviewed by the Chair.

Limited participant: A party who successfully petitions the Commission to participate on a limited basis in an ordinance appeal under § 582.5 of this subchapter.

Preponderance of the evidence: The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

Presiding official: The individual who presides over the hearing and issues the recommended decision under part 584. This individual shall not be under the direct control or supervision of the

Commission, nor subject to influence by the Chair or the Commission.

Proceeding: All or part of an appeal heard by a presiding official or the Commission, and decided by the Commission.

Summary proceeding: Ordinance appeals and management contract and amendment appeals are summary proceedings.

§ 580.2 When may the Commission waive its procedural rules governing appellate proceedings before the Commission?

The procedural provisions of parts 580 through 585 of this subchapter may be waived, in whole or in part, to promote the orderly conduct of business on motion to the Commission or on its own motion, if the ends of justice so require and if to do so does not substantially prejudice any party, except that the Commission may not extend the time for filing a notice of appeal.

§ 580.3 Who may appear before the Commission?

In any appellate proceeding under parts 582 through 585 of this subchapter, a party or limited participant may appear in person or by an attorney or other authorized representative. An attorney must be in good standing and admitted to practice before any Court of the United States, the District of Columbia, any tribal court, or the highest court of any state, territory, or possession of the United States. Any person appearing as an attorney or authorized representative shall file with the Commission a written notice of appearance. The notice must state his or her name, address, telephone number, facsimile number, email address, if any, and the name and address of the person or entity on whose behalf he or she appears.

§ 580.4 How do I effect service?

(a) An appellant shall serve its notice of appeal on the Commission at the address indicated in the decision or notice that is the subject of the appeal.

(b) Copies of the notice of appeal shall be filed personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally, by facsimile, by email to an address designated by a Commission employee, or by first class mail. In matters where a hearing has been requested, all filings shall be made with the Commission until a presiding official is designated and the parties are so notified, after which all filings shall be made with the presiding official.

(c) All documents filed after the notice of appeal shall be served on the Commission and copies concurrently served on all parties, intervenors, or limited participants.

(d) Service of copies of all documents is complete at the time of personal service or, if service is made by mail, facsimile, or email, upon transmittal.

(e) When a representative (including an attorney) has entered an appearance for a party, limited participant, or intervenor in a proceeding initiated under any provision of parts 582 through 585 of this subchapter, service thereafter shall be made upon the representative.

(f) The Commission may extend the time for filing or serving any document, except a notice of appeal.

(1) A request for an extension of time must be filed within the time originally allowed for filing.

(2) For good cause, the Commission may grant an extension of time on its own motion.

(g) Rules governing service of documents by the Chair or Commission are governed by part 519 of this chapter.

§ 580.5 What happens if I file late or fail to file?

(a) Failure to file an appeal within the time provided shall result in a waiver of the right to appeal.

(b) Failure to meet any deadline for the filing of any motion or response thereto shall result in a waiver of the right to file.

§ 580.6 How is time computed?

In computing any period of time prescribed for filing and serving a document, the first day of the period so computed shall not be included. The

last day shall be included unless it falls on a Saturday, Sunday, or Federal legal holiday, in which case the period shall run until the end of the next business day. Except for appeals of temporary closure orders, when the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal federal holidays shall be excluded in the computation.

§ 580.7 What is the burden of proof and standard of review?

(a) The Chair bears the burden of proof to support his or her action or decision by a preponderance of the evidence.

(b) The Commission shall review the Chair's actions or decisions de novo.

§ 580.8 What will the Commission's final decision contain?

The Commission may affirm, modify, or reverse, in whole or in part, the Chair's decision or the presiding official's recommended decision, or may remove a certificate of self-regulation, and will state the bases of its decision. The final decision will be in writing and will include:

(a) A statement of findings and conclusions, with the bases for them on all material issues of fact, law, or discretion;

(b) A ruling on each material issue; and

(c) An appropriate grant or denial of relief.

§ 580.9 What is the effective date of the Commission's final decision?

The Commission's final decision is effective immediately unless the Commission provides otherwise in the decision.

§ 580.10 Is the Commission's decision a final agency action?

The Commission's final decision is a final agency action for purposes of judicial review.

§ 580.11 What if the Commission does not issue a majority decision?

In the absence of a decision of a majority of the Commission within the time provided, the Chair's decision shall constitute the final decision of

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the Commission, except that if the subject of the appeal is a temporary closure order, the order shall be dissolved.

§ 580.12 Does an appeal of a Chair's decision stay the effect of that decision?

Except as otherwise provided by NIGC regulations at 25 CFR 522.5 and 522.7, the filing of an appeal does not stay the effect of the Chair's decision. The appellant must comply with the Chair's decision pending the outcome of the appeal.

PART 581—MOTIONS IN APPEAL PROCEEDINGS BEFORE THE COMMISSION

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AUTHORITY: 25 U.S.C. 2706, 2713, 2715.

SOURCE: 77 FR 58945, Sept. 25, 2012, unless otherwise noted.

§ 581.1 What is the scope of this part?

(a) This part governs motion practice under:

(1) Part 582 of this subchapter relating to appeals of disapprovals of gaming ordinances, resolutions, or amendments;

(2) Part 583 of this subchapter relating to appeals of the approval or disapproval of management contracts or amendments to a management contract;

(3) Part 584 of this subchapter relating to appeals before a presiding official of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decisions to void or modify management contracts, the Commission's proposals to remove certificates of self-regulation, and notices of late fees and late fee assessments; and

(4) Part 585 of this subchapter relating to appeals to the Commission on

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written submissions of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decisions to void or modify management contracts, the Commission's proposals to remove certificates of self-regulation, and notices of late fees and late fee assessments.

(b) This part also governs motion practice in hearings under § 535.3 of this subchapter to review the Chair's decision to void or modify a management contract.

§ 581.2 How does an entity other than a tribe request to participate on a limited basis in an ordinance appeal?

Requests for limited participation in ordinance appeals are governed by § 582.5 of this subchapter.

§ 581.3 How do I file a motion to intervene in appeals?

Motions to intervene in appeals before a presiding official are governed by § 584.5 of this subchapter. Motions to intervene in appeals before the Commission are governed by § 585.5 of this subchapter.

§ 581.4 How do I file a motion before a presiding official?

Motion practice before a presiding official on appeals of notices of violation, orders of temporary closure, proposed civil fine assessments, the Chair's decisions to void or modify management contracts, the Commission's proposals to remove certificates of self-regulation, and notices of late fees and late fee assessments is governed by § 584.4 of this subchapter.

§ 581.5 How do I file a motion to supplement the record?

Upon its own motion or the motion of a party, the Commission may allow the submission of additional evidence. A party may file a motion for leave to submit additional evidence at any time prior to issuance of a final decision by the Commission. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to previously submit such evidence. The Commission may adjust its time for issuing a final decision accordingly,